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No. 02-455

In the Supreme Court of the United States

THEODORE L. SCHMIDT, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

1. Whether a district court may consider in the first instance the merits of an individual's application for relief from federal firearms disabilities under 18 U.S.C. 925(c).

2. Whether petitioner satisfied the standards for obtaining relief from firearms disabilities.

3. Whether petitioner should have been granted leave to amend his complaint.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a) is unreported. The memorandum and order of the district court (Pet. App. 50a- 58a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 21, 2002. The petition for a writ of certiorari was filed on August 19, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under federal law, persons convicted of a felony or a misdemeanor crime of domestic violence are prohibited from possessing, transporting or receiving firearms. 18 U.S.C. 922(g)(1) and (9); see 18 U.S.C. 921(a)(33). Through a delegation of authority from the Secretary of the Treasury, the Director of the Bureau of Alcohol, Tobacco, and Firearms (ATF) may lift that prohibition if, after an investigation, "it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. 925(c). "Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial." *Ibid.* However, in each of the applicable annual ATF appropriations laws passed since 1992, Congress has expressly forbidden ATF from employing any appropriated funds to investigate or act upon applications for relief under Section 925(c). See, *e.g.*, Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, 115 Stat. 519.

2. Petitioner was convicted of a domestic violence misdemeanor. Accordingly, he is prohibited under federal law from possessing firearms. Petitioner sought to apply to ATF for relief from his federal firearms disabilities under 18 U.S.C. 925(c). The ATF informed petitioner that it could not process any applications in light of the continuing congressional appropriations ban precluding ATF from acting upon such matters. Pet. App. 52a.

Petitioner filed suit in federal district court, asking the court to conduct its own inquiry into his fitness to carry arms, and to issue a judicial order removing his firearms disabilities. The district court assumed jurisdiction over the relief petition. On the merits, the district court dismissed petitioner's claim, holding that petitioner's allegations failed to satisfy the stringent standards the Third Circuit had established in *Rice* v. *United States*, 68 F.3d 702 (1995), for a court to remove firearms disabilities in circumstances where ATF is prohibited by the appropriations bar from doing so. Pet. App. 50a-58a.

The court of appeals summarily affirmed the district court's judgment on the basis of its intervening en banc ruling in *Pontarelli* v. *ATF*, 285 F.3d 216 (3d Cir. 2002). Pet. App. 1a. In *Pontarelli*, the Third Circuit overruled its prior decision in *Rice* and held that district courts lack authority to grant relief from firearms disabilities in any circumstances. 285 F.3d at 231.

DISCUSSION

Petitioner argues (Pet. 9) that district courts have authority to grant an applicant's relief from firearms disabilities. In *United States* v. *Bean*, cert. granted, 534 U.S. 1112 (2002) (No. 01-704), this Court granted the government's petition for a writ of certiorari to resolve that issue. The Court heard oral argument in *Bean* on October 16, 2002. Because the decision in *Bean* is likely to resolve the question whether a court has authority to grant relief from firearms disabilities, the petition in this case should be held pending the decision in *Bean*.

Petitioner further argues that he satisfied the statutory standards for removal of firearms disabilities, and that he should have been granted leave to amend his complaint. Because the court of appeals disposed of

petitioner's appeal on the basis of its holding in *Pontarelli* that district courts lack authority to grant relief from firearms disabilities, it did not address those issues. Those issues are therefore not properly presented here. In any event, those fact-bound contentions do not warrant review.

CONCLUSION

The petition for a writ of certiorari should be held pending the decision in *United States* v. *Bean*, No. 01-704, and then disposed of as appropriate in light of that decision.

Respectfully submitted.

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